No. 15131

In the

United States Court of Appeals

For the Ninth Circuit

STATES STEAMSHIP COMPANY, a corporation, *Appellant*,

v.

UNITED STATES OF AMERICA, ATLANTIC MUTUAL INSURANCE COMPANY, PACIFIC NATIONAL FIRE INSURANCE COMPANY and THE DOMINION OF CANADA, *Appellees*.

ATLANTIC MUTUAL INSURANCE COMPANY, *Appellant*,

v.

STATES STEAMSHIP COMPANY, a corporation, UNITED STATES OF AMERICA and THE DOMINION OF CANADA, *Appellees*.

PACIFIC NATIONAL FIRE INSURANCE COMPANY, *Appellant*,

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UNITED STATES OF AMERICA, *Appellant*,

v.

STATES STEAMSHIP COMPANY, ATLANTIC MUTUAL INSURANCE COMPANY, PACIFIC NATIONAL FIRE INSURANCE COMPANY and THE DOMINION OF CANADA, *Appellees*.

THE DOMINION OF CANADA, *Appellant*,

v.

STATES STEAMSHIP COMPANY, ATLANTIC MUTUAL INSURANCE COMPANY, PACIFIC NATIONAL FIRE INSURANCE COMPANY and THE UNITED STATES OF AMERICA, *Appellees*.

REPLY BRIEF OF APPELLANTS

Atlantic Mutual Insurance Company, Pacific National Fire Insurance Company and The Dominion of Canada.

Appeals from the United States District Court for the District of Oregon

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JURISDICTION

This proceeding was commenced by the filing of a petition for exoneration from or limitation of liability by States Steamship Company as corporate owner of the SS PENNSYLVANIA. The petition was filed in the United States District Court for the District of Oregon.

The jurisdiction of the District Court was acquired under Rules 51-55 of the United States Supreme Court Admiralty Rules.

The jurisdiction of this court was acquired under 62 Stat. 929, 28 U.S.C.A., § 1292.

INTRODUCTION

This brief is filed by appellants Atlantic Mutual Insurance Company, Pacific National Fire Insurance Company and The Dominion of Canada, in reply to the answering brief of petitioner, States Steamship Company, as the corporate owner of the SS PENNSYLVANIA.

Since the issues of fact and law presented by the record in this proceeding have been reviewed at length in our opening and answering briefs, we shall endeavor to avoid repetition and respond directly to certain specific matters presented in petitioner's answering brief.

As in the case of the opening brief filed by these appellants the issues reviewed herein relate primarily to the subject of limitation of liability under 46 U.S.C.A., § 183, and the clear error of the trial court in finding that the evidence was sufficient to show that the unseaworthy condition of the SS PENNSYLVANIA at the inception of her Voyage 6 was without the privity or knowledge of petitioner. However, as we have pointed out in our opening brief, as appellants, and in our answering brief, as appellees, petitioner's knowledge and privity respecting the unseaworthiness of the vessel is, under the evidence in this case, inseparably related to its failure to use due diligence within the meaning of the Carriage of Goods by Sea Act of 1936 and the equivalent Canadian statute. This circumstance follows as a matter of law in view of the substantial evidence that petitioner's failure to use due diligence, as found by the trial court, was the result of the personal neglect of petitioner's Marine Superintendent and other supervisory personnel em-

ployed by petitioner who were invested with high responsibility and charged with direct supervision over the very "phase of the business out of which the loss . . . occurred". *Coryell v. Phipps*, 317 US 406, 87 L ed 363, 1943 AMC 18.

This lack of due diligence and petitioner's corresponding privity therein is highlighted in petitoner's answering brief under its assertion that its Marine Superintendent fully discharged his responsibilities by delegating them to the unfortunate officers of this vessel. In fact the foregoing assertion by petitioner, in the total absence of justifying legal authority, is the principal subject of this reply brief.

ARGUMENT

I

Delegation to the Officers of the SS PENNSYLVANIA of Entire Responsibility for the Care, Maintenance, Inspection and Repair of the Vessel, Its Machinery and Equipment.

At page 8 of its answering brief, petitioner advances the proposition that its Marine Superintendent had "set up" or "succeeded to" a system for the upkeep of its vessels under which the officers of the ship, "particularly the Master and Chief Engineer, were held directly responsible for the proper upkeep, maintenance, and repair of their own ship". Petitioner further states,

without citing any supporting transcript reference (and none can be cited), that the system of relying directly upon the ship's officers for performance of these duties is that employed "in all well-run steamship operations by all companies".

The foregoing proposition employs the theory under which petitioner now seeks to avoid its privity or knowledge in the unseaworthiness of the SS PENNSYLVANIA. It pervades petitioner's entire answering brief and is advanced with respect to each factor of unseaworthiness of this vessel as found by the trial court.

According to petitioner, this system was applied with respect to the vessel's hull, steering machinery, hatch securing equipment, the condition of the forward hatches and the carriage and stowage of deck cargo on the forward deck at the inception of Voyage 6. Vallet, the Marine Superintendent, relied upon the officers of this vessel to make the necessary inspections and submit recommendations for further needed inspections or repairs, and he assumed that everything was all right if he received no such recommendations or any adverse reports from the personnel employed aboard this particular vessel (petitioner's answering brief, pp 10-11, 34, 45, 50).

In fact, Petitioner asserts at page 11 of its brief that Vallet was "diligent in the extreme" in enforcing this

system. The implication then follows that since the Marine Superintendent was so diligent in delegating his responsibility under this system to a group of company employees, consisting of deck officers and the chief engineer, Vallet exercised due diligence with respect to the vessel and could not be in privity with any neglect or omission on the part of the employed personnel to whom he had delegated his duties.

It is not surprising that petitioner cites no authority justifying, or in any way condoning, the system "set up" or "succeeded to" by Mr. Vallet, for all authorities are to the contrary. It is surprising that petitioner would confess to such a system of delegation and reliance by its Marine Superintendent since under authorities reviewed in our opening and answering briefs, the delegation of entire responsibility to ship's officers, and the complete reliance upon them by the Marine Superintendent is not the exercise of due diligence for purposes of liability under the Carriage of Goods by Sea Act, or a means of avoiding privity or knowledge for purposes of limitation. We submit, in fact, that this system itself emphasizes the very lack of due diligence on the part of Vallet and forecloses any contention under the evidence that Vallet was not in privity with the unseaworthiness of the SS PENNSYLVANIA at the inception of her Voyage 6, and the failure of petitioner

to exercise due diligence as found by the trial court. Illustrative of the authorities reviewed in our prior briefs in this connection is the decision of this court in *The SILVER PALM*, 94 F2d 776 (9th Cir., 1937), 1937 AMC 1462, where the rule was stated at p 780, as follows:

> "In proceedings for limitation, the owner may not escape liability by giving the managerical functions to an employed person acting as its agent, whether the person be corporate or otherwise. So far as concerns privity and knowledge such an agent is its alter-ego."

An apt statement of the rule is made in *The ARGENT*, 1940 AMC 508, where the court stated, at p 509:

> "It would, however, be a very easy matter for an owner to shelter himself behind an actual ignorance if lack of personal knowledge always constituted a good defense to the extent of the protection accorded by statute. If lack of actual knowledge were enough, imbecility, real or assumed, on the part of owners, would be at a premium. Such assumption of ignorance would be peculiarly easy on the part of corporate owners. Corporate owners have of late years greatly multiplied, and it is accordingly found that the doctrine of imputed knowledge and imputed privity has grown to meet the demands of business.
>
> "In this case I think it conclusively proven that no officer of the petitioning corporation knew that

the Argent maintained an unlawful light but for the matter of that they did not know whether she maintained a light at all, they did not regard it as any part of their business to ascertain whether that humble vessel was complying with the law or violating it every day."

. . .

"As long ago as *Republic*, 61 Fed. 109, knowledge of what owners could have seen if they had looked was imputed to them . . .".

See also:

Austerberry v. U. S., 169 F2d 583 (6th Cir., 1948) at p 594:

". . . the burden was upon the appellee to show that it had no privity or knowledge . . . To sustain the burden of proof that is imposed in cases like this it may be observed that it is not sufficient to show that operations and care of the vessel were placed in the hands of men of experience in such matters . . .".

. . .

"The burden was upon the government to prove that it had no privity or knowledge of negligence, or that there was no privity or knowledge or the means of knowledge of negligence on the part of those to whom it had delegated the duties of commanding, maintaining, and operating the vessel."

In *The POCONE*, 159 F2d 661 (2nd Cir., 1947), 1947 AMC 306, a subordinate traffic manager was delegated supervision over the condition of the company's

ships as they came into port and attention to any repairs they might need. The case involved cargo damage by fire and water arising from a fire in coal stowed in a cross bunker, and the personal neglect of the subordinate traffic manager was held to preclude limitation of liability by the corporate shipowner. The failure of the traffic manager to exercise due diligence was described by the court, at pp. 664-665, as follows:

> "We charge Borges [the traffic manager] with all that the master knew, not because the master knew it, but because it was his duty from what the master told him and what he saw, *not to accept the master's assumption that all was well*, but to push inquiries home, to cross-examine the master, to examine the engine room logs, and in general to bestir himself until he had all the information that anyone on board had. As in all such cases, the measure of the duty imposed depends upon the cost or difficulty of the precaution, compared with the hazard and the interest at stake . . . *The measure in such cases is not what the owner knows, but what he is charged with finding out.* He may, if he will, put his ship at hazard and answer as he can to his underwriters, but to the cargo he must not be indifferent; he is relieved of his absolute liability at common-law only upon condition that he exercises care measured by the occasion." (Emphasis supplied)

Petitioner admits that Vallet had complete charge of maintenance and repair of the vessel (petitioner's brief pp 8-9, Tr 140). The true extent of Mr. Vallet's

responsibilities and duties as Marine Superintendent appears in the following testimony of J. R. Dant, petitioner's Vice-President and General Manager:

> Q Will you say that the Marine Superintendent, Mr. Dyer, when he is in charge, has general authority to care for the repairs of the vessel *and supervision of what is necessary to be done on those vessels?*
>
> A Yes.
>
> Q And when he was absent, why, Mr. Vallet took his place?
>
> A Yes.
>
> Q And had the same authority that Mr. Vallet had; is that correct?
>
> . . .
>
> A Yes." (Emphasis supplied) (Tr 2623)
>
> "Q You would say that generally he was in charge of the making of the necessary repairs to the vessel?
>
> A That is correct.
>
> Q *And for the inspection thereof on behalf of your organization?*
>
> A Yes." (Emphasis supplied) (Tr 2624)

Nothing in the testimony of Mr. Dant provides authority, within petitioner's own organization, for the so-called system of delegation employed by Mr. Vallet under which he left the maintenance, upkeep and re-

pair of the vessel to the officers of the individual ship in question.

Vallet's failure to exercise due diligence through his reliance upon this system of delegation and his corresponding privity in the inadequacies of inspection and repair resulting therefrom are emphasized by the lack of any satisfactory evidence as to the qualifications of the ship's officers to assume and carry out such duties. There is no evidence of the qualifications of Captain Plover, Master of the SS PENNSYLVANIA, in the field of marine survey and inspection of a vessel's hull, machinery and equipment, or that he ever undertook or participated in such inspections. Petitioner's reference to Mr. Brenneke's testimony on the qualifications or responsibilities of a chief engineer (petitioner's answering brief, p 8; Tr 321-322) is not in the least persuasive.

An examination of the actual testimony of Charles E. Matthews, chief engineer on the SS PENNSYLVANIA during Voyage 1 through 5, inclusive, will disclose the limitations in the actual inspections made by Matthews, and his individual limitations as a qualified marine surveyor. Matthews joined the ship on February 1, 1951, for Voyage 1. At that time he "looked her over just visually or casually" (Tr 336-338). He "watched" the repairs undertaken to the Class 1 deck

fracture in Portland, Oregon on February 5 (Tr 341). There is no evidence of an independent or thorough inspection by Matthews as to the vessel's entire hull, machinery or equipment following the Class 1 casualty sustained on Voyage 5, either when the vessel was in Portland, Oregon for repairs or subsequently in drydock in Seattle, Washington at the conclusion of Voyage 5. The participation by Matthews in the drydock inspection of the vessel at the conclusion of Voyage 5 is indicated by his testimony:

> "I was just an observer. If I happen to see anything I could report it to the port engineer and inspectors . . ." (Tr 347).

He was not with the American Bureau of Shipping or the Coast Guard inspectors all the time and could not state whether or not these personnel hammer tested the vessel (Tr 348-349). His limitations as a marine surveyor charged with responsibility for the integrity of the vessel's hull and requisite inspections and repairs following a serious hull casualty, are illustrated by his testimony:

> "Q The cracked deck that you have spoken of on Voyage 1, would you consider that was a Class 1 casualty?
>
> A I don't know much about the class of casualties." (Tr 369)

Matthews did not repair the cross battens on the forward hatches as he did not receive a request from the deck department to make any such repairs (Tr 2830).

As to the condition of the steering machinery, Vallet looked to Matthews for necessary inspections and reports of needed repairs. The inspection of this vital machinery by Matthews was confined to an external observation of the steering engine while the vessel was operating at sea, and even worse, it appears that such inspection was made primarily by an unlicensed oiler on watch (petitioner's answering brief p 11; Tr 350-351). By way of analogy, petitioner might as well contend that a seaman-lookout could be charged with responsibility for navigation of the vessel upon delegation of authority in this respect from the Master or watch officer.

No further evidence appears in the record of this proceeding as to the qualifications of other officers on the SS PENNSYLVANIA to assume the heavy responsibility delegated to them by Vallet.

Petitioner should know that it cannot discharge the duties of its marine department by delegating them to the officers of a particular ship, and thereby avoid privity in the unseaworthiness of the vessel arising from inadequate inspections and repairs. The corporate ship-

owner cannot shelter itself behind an actual ignorance arising from lack of adequate reports from its ship's officers, or a lack of recommendations by its ship's officers as to needed inspections or repairs to the vessel's structure, machinery and equipment. To support petitioner's asserted system of delegation to and reliance upon the officers of this ship would place "imbecility, real or assumed, . . . at a premium". *The ARGENT*, 1940 AMC 508 (D.C.S.D.N.Y., 1915).

Under the Limitation of Liability Act, knowledge or privity "means not only personal cognizance but also the means of knowledge—of which the owner *or his superintendent* is bound to avail himself—of contemplated loss or condition likely to produce or contribute to loss, unless appropriate means are adopted to prevent it." (Emphasis supplied) *The CLEVECO*, 154 F2d 605 (6th Cir., 1946).

II

The Privity of Petitioner's Supervisory Personnel

A. The Marine Superintendent and Assistant Port Engineer.

Referring to Vallet individually, petitioner goes on to assert that Vallet discharged his duties in full by operating under the "well recognized principle" of holding the ship's master, chief engineer and officers

responsible for their ship (petitioner's answering brief, p 34). Petitioner then states that Vallet enforced this system and "by his staff made additional inspections". It is obvious that under petitioner's system of delegation and primary reliance upon the ship's officers, any inspections made by Vallet and his shore staff were incidental, superficial and supplementary in nature. The evidence confirming Vallet's personal lack of due diligence in the maintenance, upkeep and repair of this vessel, its equipment and machinery, has been reviewed in detail in our previous briefs.

At pages 41-43 of our opening brief, the standards recommended and prescribed by Vallet for inspection and repair of a vessel after sustaining a serious fracture are set forth. Petitioner has taken exception to our reference to Vallet's testimony in this respect (petitioner's answering brief, pp 24-25). Although the time element for such an inspection is not material in this case, we must take exception to petitioner's implication that a four or five day *drydocking* would be required for a thorough inspection of the vessel's hull *and* machinery. The drydock examination for the underwater body of the vessel took one day (petitioner's answering brief, p 26) but no one assumes that a four or five day drydocking would be necessary for a thorough inspection of the vessel's machinery.

In any event, aside from the time element necessary to a thorough inspection of the vessel, it is clear that the hull of this vessel was never given the inspection prescribed by Vallet as necessary after it sustained the Class 1 hull fracture on Voyage 5. Vallet testified that the Voyage 5 fracture was a serious crack and that this meant to him that a thorough examination must be made of the vessel (Tr 262). Vallet showed that he was completely cognizant of the significance of a Class 1 hull casualty, which has been defined as one which has weakened the main hull structure so that the vessel is lost or in a dangerous condition (Tr 1864-1865) or one where the strength of the structure is so weakened that it would be in imminent danger of further failure (Tr 2770).

Vallet then testified that a "complete" and "detailed" inspection of the hull would require that the vessel be completely unloaded, be placed on drydock, and that such an inspection would involve going inside the vessel, examining all the welds on the inside, and all of the main structures (Tr 226-229). Quite aside from the inadequacies of petitioner's inspection of the vessel's steering machinery and hatch securing equipment, the record discloses that the hull of the SS PENNSYLVANIA was never accorded an inspection complying, at the very minimum, with the standards prescribed by Vallet as aforementioned.

The indifference of Vallet to enforcement of standards of inspection in this instance is illustrated by the fact that he dispatched his Assistant Port Engineer, Mr. Brenneke, to inspect the vessel in Seattle, Washington at the conclusion of Voyage 5 without giving Brenneke any specific instructions to supervise and direct a thorough examination of the vessel conforming to the very requirements specified by Vallet. Mr. Brenneke, accordingly, limited his superficial examination of the vessel to the routine underwater body inspection which had been scheduled at the annual survey in August, 1951 (Tr 1717). Neither Mr. Vallet nor Mr. Brenneke conveyed to the inspecting personnel of the U. S. Coast Guard or the American Bureau of Shipping any information or instructions relating to the vessel or its recent Class 1 hull casualty which would affect the degree and extent of their inspection (Tr 684-685; 769).

Petitioner speculates that the personnel of these organizations "probably knew" of the Class 1 fracture on the previous voyage, although the evidence is to the contrary (petitioner's answering brief, p 27). The interrogation of witnesses on this subject on the part of counsel for cargo claimants was direct and not covert as asserted by petitioner (petitioner's answering brief, p 28). Petitioner's counsel was entirely free to interrogate these witnesses independently and to develop

any further information which he might feel was lacking in the record, but did not choose to do so at the trial of this proceeding.

The inspecting personnel of the American Bureau of Shipping and the U. S. Coast Guard did not, as petitioner contends (petitioner's answering brief, p 29) go "all over the vessel". No examination was made of the main deck of the vessel and no thorough examination was made of the interior of the vessel's hull or cargo compartments, and at the time of this inspection the vessel was not even unloaded.

However, Vallet and his marine department did not depend in any event upon the inspections and surveys of the American Bureau of Shipping and the U. S. Coast Guard (Tr 231). Vallet's duties in the exercise of due diligence were, of course, to the ship, its crew and cargo and not the obtaining of certificates of surveyors. *The NINFA*, 156 F 512 (D.C.D. Ore., 1907); *The FELTRE*, 30 F2d 62 (9th Cir., 1929), 1929 AMC 279. In truth, as petitioner has confessed, Vallet depended upon the officers of this ship and in the absence of recommendations or adverse reports from them he assumed that all was well.

We must take note of the inconsistencies in petitioner's reference to Vallet's Assistant Port Engineer, Mr.

Brenneke. According to petitioner, Mr. Brenneke was one of the "competent shore-side staff" which Vallet was so diligent in employing (petitioner's answering brief, p 8); "a thoroughly competent man" who "needed no specific instructions" and "knew what an inspection should be" (petitioner's answering brief, p 26). When allusion is made to Brenneke's status in management hierarchy, however, Brenneke is referred to as an inconsequential "minor character" (petitioner's answering brief, p 4) and as a footman "chasing from one place to another on attendance to vessels" (petitioner's answering brief, p 35). Despite its alternate deprecatory treatment of Mr. Brenneke, petitioner cannot escape its privity in the negligence of Mr. Brenneke as well as the negligence and omissions of Mr. Vallet under the rule of *The POCONE*, supra, and that stated in *In Re P. Sanford Ross*, 204 F 248 (2nd Cir., 1913) at p 251:

> "The real test is not as to their being officers in a strict sense, but as to the largeness of their authority."

Justifiably, petitioner is concerned over the evidence of numerous fractures in the deck of the SS PENNSYLVANIA, as reviewed at pages 47 through 51 of our answering brief. It asserts that these cracks were not

significant and did not affect the seaworthiness of the vessel. However, petitioner overlooks the testimony of David P. Brown, on cross-examination, that "these small one or two inch cracks can be dangerous" (Tr 2783) and the testimony of petitioner's witness, Coast Guard Commander Rivard that any crack in the plates of the vessel's main deck is of importance and affects its seaworthiness (Tr 618-619; 647-648).

Mr. Nordstrom disclosed his complete lack of qualification and ignorance on the subject of brittle fracture when he disagreed with Mr. Brown of the American Bureau of Shipping and Commander Rivard as to the significance of cracks in the vessel's main deck (Tr 2885-2886).

Petitioner's theory that the Voyage 5 Class 1 deck fracture had no effect on the structural integrity of the vessel was not accepted by the trial court, in view of the substantial evidence to the contrary, and as reflected in the trial court's finding of fact No. V. Furthermore, as reviewed in our prior briefs, the strain-aging to which this vessel's hull had been subjected had been developing over a period of years and was actually evidenced by the major deck fracture sustained on Voyage 5.

B. Inspection of the Steering System.

Previously in this brief we have commented upon the limited inspection of the vessel's vital steering machinery resulting from Vallet's system of delegating responsibility to Chief Engineer Matthews and Matthew's delegation, in turn, of inspection to an unlicensed oiler on watch at sea. In our answering brief, we have noted that petitioner confined inspection of this machinery, while the vessel was in port during its August, 1951 survey, to a dockside operating test of the main steering system and external examination of the steering parts. We have pointed out that petitioner has failed to produce any evidence of inspection complying with the standards of examination for this very type of machinery prescribed by *The IONIAN PIONEER*, 236 F2d 78 (5th Cir., 1956), 1956 AMC 1750, and *The MEANTICUT-BEDFORD*, 65 F Supp 203 (D.C.S.D.N.Y., 1946), 1946 AMC 178.

It is indeed surprising that petitioner now refers to a survey of the vessel's machinery conducted by the United States government in February, 1949 under which hydraulic pumps of the steering gear were opened and examined (petitioner's answering brief, p 42; Exh. 147). This survey, of course, evidences the exercise of due diligence by the United States government in the inspection of the steering machinery of this ves-

sel consistent with standards specified by the above authorities. The inspection was made, as petitioner states, two years before the vessel was purchased by petitioner and approximately three years before the vessel was lost. Petitioner apparently implies that it is entitled to rely upon due diligence exercised by a former owner of the vessel. This is a novel proposition supported by no authority.

C. Privity in the Unseaworthy Condition of the Forward Hatches and the Insecurity of the Stowage and Carriage of the Deck Cargo.

In endeavoring to avoid privity in the foregoing phase of the vessel's unseaworthiness, petitioner again resorts to its system of delegation of responsibility to the officers of the ship and our previous comments on this system of delegation and reliance are again applicable.

As to Vallet's privity in the unseaworthy stowage of deck cargo, petitioner would alter the record of Vallet's following testimony:

> "When the vessel is loaded and properly stowed and bunkered, we advise the Master to that effect, and we leave it up to him when he should leave." (Tr 284). (Petitioner's answering brief, pp 14-15)

Petitioner now desires to substitute the word "stored" for stowed as used by Vallet in his above testimony, since petitioner asserts that Vallet was not discussing the loading of the vessel in so testifying. The reporter's transcription of Vallet's testimony, as above quoted, is clearly correct since the word "stowed" as used by Vallet relates directly to the prior clause "when the vessel is loaded".

In seeking to avoid privity as to the insecure stowage of the deck cargo forward, petitioner ignores the testimony of well-qualified master mariners that the stowage of the cargo on the forward decks was unseaworthy, considering the season and waters to be traversed, and petitioner endeavors to minimize the fact that this stowage was reported daily to its Seattle office by a supercargo regularly employed by petitioner. This supercargo operated under Mr. Pitzer's supervision and direction (Tr 237) and was on hand aboard the SS PENNSYLVANIA in charge of the loading for States Steamship Company "to see that the cargo is loaded the way we want it loaded" (Tr 1167). Referring to Mr. Pitzer, head of petitioner's Operating Department, Vallet testified:

"Q Does he have charge of the loading of the vessel?

A Yes.

. . .

Q If you have a vessel coming into Seattle or Tacoma, he goes up there, does he, or someone —.

A Not necessarily, he don't. He possibly has a supercargo in attendance.

Q *It is under his supervision and direction then, I take it?*

A Yes." (Tr 237) (Emphasis supplied)

The privity and knowledge of petitioner in the unseaworthy condition of the hatches and the insecure carriage and stowage of the forward deck cargo is reviewed in our opening brief at pages 50 to 58, and in our answering brief at pages 81 to 93. We believe that our prior discussion of this phase of the vessel's unseaworthiness refutes the treatment of the subject appearing at pages 43 to 51 of petitioner's answering brief, and need not be repeated at this time.

CONCLUSION

The record in this proceeding provides abundant support for the findings of the trial court that the SS PENNSYLVANIA was unseaworthy at the inception of her fatal voyage, that petitioner failed to exercise due diligence to make the SS PENNSYLVANIA seaworthy for this voyage and that such unseaworthiness was the proximate cause of the vessel's loss.

The evidence also demonstrates that the failure of petitioner to exercise due diligence, as found by the trial court, was the personal negligence and omission of petitioner's marine superintendent and other supervisory personnel who were invested with high responsibility in the company's management and operations. The failure of these individuals to exercise due diligence in the performance of their duties precludes petitioner's right to limit its liability in this proceeding.

Respectfully submitted,

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